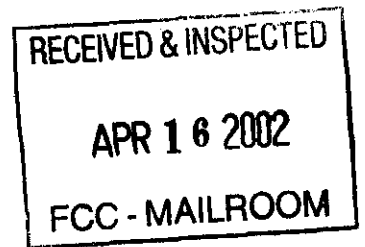


BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554



In the Matter of	}	
	}	
Review of The Section 251 Unbundling	}	CC Docket No. 01-338
Obligations of Incumbent Local Exchange	}	
Carriers	}	
	}	
Implementation of the Local Competition	}	
Provisions of the Telecommunications Act	}	CC Docket 96-98
Of 1996	}	
	}	
Deployment of Wireline Services Offering	}	CC Docket <u>98-147</u>
Advanced Telecommunications Capability	}	
		FCC 01-361

**COMMENTS TO NOTICE OF PROPOSED RULEMAKING**

**INTRODUCTION**

This Notice of Proposed Rulemaking contains "tentative conclusions" raising significant and extremely important concerns to the Competitive Providers attempting to provide a high quality Broadband product at a reasonable price to the American consumer. JAS Networks, Inc. is one of those small CLECs seeking to provision broadband service to the residential and business end user.

JAS Networks, Inc. is a licensed facilities based Competitive Local Exchange Carrier located in Battle Creek, Michigan and providing service to business and residential customers in six (6) small to mid sized cities out of seven (7) central Offices. We have not concentrated on providing service to the large metropolitan areas that have been the primary service area of SBC/Ameritech. We serve otherwise underserved areas, those

areas that except for JAS would not have high speed internet access, including cable, wireless and satellite, or at least an option for service. JAS Networks, Inc. offers a variety of DSL plans: 768kbps residential plan for \$44.95 per month, 768 kbps business plans beginning at \$59.95 per month, and a 2.3 meg per second business plan for \$299.00 per month. Significantly cheaper than the T1 and ISDN plans offered by the ILECs, and providing higher quality of service that the ILECs no longer felt a need to provide to their customers before competition came into being. In addition, although ILECs tend to limit their coverage area for providing DSL service to approximately 18,000 feet, JAS Networks, Inc. has been able to provide service to customers at distances of 35,000 feet and greater. Although a small CLEC, JAS Networks, Inc. has attempted to expand technology to provide service to a greater number of customers.

The “tentative conclusions” in the NPRM which may result in removal of the obligation of ILECs to provide access to Unbundled Network Elements, at reasonable rates and in a quality manner, would severely degrade the possibility of JAS Networks, Inc., as well as other competitive entities, to continue to provide service to customers. The Federal Communications Commission must, as a result of this NPRM and the other surrounding proceedings, reinforce the obligation of the ILECs to make Unbundled Network Elements, including the loop, cross connects, and transport, available to CLECs in order to insure a competitive environment, improved technology, and greater high speed internet access to consumers so that America can continue to be the premier business and technology country in the world.

## COMMENTS

The focal point for consideration by the Federal Communications Commission, and all others considering the issue of access to the Networks Elements of the Incumbent Local Exchange Carrier, is that the Incumbent Local Exchange Carriers have the infrastructure connecting them to the end user customer. The copper wire pair that is used to provide voice service to the end user voice customer, and which is the same copper pair that is used to provision DSL service, is a Network Element that must be made available to Competitive Providers in order for there to ever be a competitive market for telecommunications. There are other Network Elements also needed to provision service (e.g. cross connects, etc), and that help make up the “last mile” connection, which if not made available to Competitive Providers, will surely result in the ILECs being the only game in town. The Federal Telecommunications Act of 1996, every piece of state legislation, and every decision of the Federal Communications Commission, Courts, and state Public Service/Utility Commissions, has professed that the purpose of all efforts in this arena is to open up the competitive market. The tentative conclusions and implications made by the Federal Communications Commission in this NPRM not only calls into question the entire “Competitive Philosophy” of the Federal and State Legislation, but also every decision of the FCC over the last 6 years.

As set forth in the NPRM,

“With respect to facilities-based entry, we seek to promote entry not only by fully facilities-based carriers but also by those facilities-based carriers that purchase actual UNEs, such as the loop.” (Paragraph 3, page 3)

To facilitate a competitive broadband market in the United States, it is absolutely essential that competitive carriers be given access to all Unbundled Network Elements necessary to provision service to end users. Further, these UNEs must be provided to CLECs at rates that allow a competitive carrier to provide a competitive product at competitive prices. The ultimate consumer is not going to feel there is a competitive market, a choice, when the competitive product cost 100-200% more for the product or service than the cost to obtain the service from the ILEC. Competition cannot survive in a market where the Monopoly Provider dictates not only the quality of service provided, but also the price, and in reality who can or cannot obtain service.

There can be no doubt that the ILECs will not price the UNEs in a competitive manner, without proper regulation over pricing and delivery of service. Even the FCC acknowledges that repeatedly in this NPRM. The ILECs have historically charged higher non-recurring and monthly rates that have resulted in less competition than would otherwise prevail. This is true even with rates that are somewhat structured by our current regime. As an example, currently in Michigan for JAS Networks, Inc., a facilities based carrier, to provision what is called an "xDSL capable" loop for the provisioning of DSL service to an end user, SBC/Ameritech charges JAS \$421.33 just for the installation of that loop. These charges do not include extra effort by SBC/Ameritech in the provisioning of the loop as any line conditioning by SBC/Ameritech results in additional charges to JAS Networks. The installation charge for an analog loop is \$20.98. Now considering the exact same two wire pair copper loop can be used to provision the analog service or the xDSL service, it belies the "competitive" nature of the market that such is fair and reasonable. Assuming a monthly service charge of \$49.95 for the DSL service

(the same as SBC/Ameritech charges), a CLEC will have to utilize more than the first eight months of the customer payment just to pay off the installation charge to SBC/Ameritech. That does not take into consideration any other charges that will be imposed, such as the monthly recurring charge for loop and cross connect, nor other charges that may be imposed such as for line conditioning, nor the CLEC's general office overhead. Obviously a profit also does not come into play. A facilities based high speed internet access provider is not able to effectively compete with SBC/Ameritech in such a pricing environment. When you consider that SBC/Ameritech is able to offer a package of free installation, free activation, free one month service, a \$199 Giftcard free, and free use of modem for the exact DSL service the competitors are offering (current offering of SBC/Ameritech [www.ameritech.com/DSL](http://www.ameritech.com/DSL)), even if the competitors try and provide the service at the same monthly service fee as SBC/Ameritech, the pricing differential does not allow the competitor to truly compete. It merely postpones the inevitable of bankruptcy if the ILECs are able to get away with such practices. For this Commission's consideration, the impact is that it readily highlights and proves that the ILECs will not price their UNE's at prices that allow for competition. Such an inequitable pricing scenario amounts to a swing of over \$600.00 for the same service. At \$49.95 per month for the service, that amounts to over one year of service that the CLEC has to absorb in its budget just to be able to offer a competitive product to customers in order to compete with Ameritech.

The Commission asks for comments in response to a petition by SBC, Bell South and Verizon that "requesting carriers are no longer impaired without access to high-capacity loops and dedicated transport".

As stated in the UNE Remand Order, 15 FCC Rcd 3696;

“The failure to provide access to a network element would “impair” the ability of a requesting carrier to provide the services it seeks to offer if, taking into consideration the availability of alternative elements outside the incumbent’s network, including self-provisioning by a requesting carrier or acquiring an alternative from a third party supplier, lack of access to that element materially diminishes a requesting carrier’s ability to provide the services it seeks to offer.”

As the Commission is aware, various providers have attempted to build out a network to provide high capacity lines for broadband provisioning. However, as the Commission is also aware, these efforts have still not provided a ubiquitous coverage area encompassing all of America. The large urban areas may well have enough lines to provide the broadband capacity that they need, not only from the ILECs but also from competitors. And in that type of situation, there may well be a market based pricing philosophy that exists so that the pricing does allow for competition. However, the outlying areas and rural America are still without. If that were not the case, states such as Michigan would not be making the big push for further build-out to include the rural areas of America. For example, Governor Engler of Michigan announced a Broadband Initiative wherein the intent is to build out the infrastructure so as to be able to provide broadband to the rural and underserved areas in Michigan. Even so, the broadband initiative defines “broadband” as 200kbps, hardly a lightning fast connection by today’s standards. Yet, if this Commission takes away the obligation of the ILEC’s to provide access to high capacity lines, and the data providers are unable to have economical and quality connections to transport data, the residents in rural Michigan, as in every other state, will be without broadband capability. Obviously, the ILECs are not going to provide DSL to the more rural markets as they have made no effort to do so, even though they already have the infrastructure in place necessary to provision the service. SBC/Ameritech have

already announced their plan to scale back Project Pronto, which could provide service in those areas of the state currently underserved. In Michigan, Verizon (formerly GTE) has made no effort to be the broadband provider to the people of the state. Businesses and residential customers throughout the state of Michigan are without adequate ability to obtain broadband connection at speeds that meet their demands and at an economical price that they can cost justify. A T1 may provide the speed that the customer desires, but at a price of approximately \$1000 per month plus, not including the installation costs, it is not within most business and residential budgets. Although an ISDN line may provide a more attractive price, at only 128kbps, it does not even approach the definition of a broadband service at 200kbps. Although the ILEC's had knowledge of DSL capability for a number of years prior to the enactment of the Federal Telecommunications Act of 1996, it was not an offered service by them since to do so would undermine the profitability of T1's, for those customers who could afford it, and ISDN lines, for those willing to accept the slower speeds, frequent disconnects and high price. Plus, with no competition, they did not have to offer the customer anything that the ILEC did not want to provide. Now, with the advance of competition, DSL has become a viable option. Offering both business and residents the benefit of faster speeds and more reasonable price. Yet, DSL coverage is still lacking in most locations where telephone service is available in every state in America.

Competitive Providers have been responsible for bringing high speed internet connection to America. Even though the ILECs are the service providers of a majority of DSL lines in service, the broadband movement became a reality as a result of the efforts of CLEC's. CLEC's initiated providing DSL service, overcoming and despite the many hurdles and

obstacles placed in their path by the ILECs. Through the ILECs impeding action of challenging the provisioning of service, to delay in provisioning, to exorbitant pricing, to the providing of an inferior product and service, to name just a few, the CLECs have persevered to be able to provide high speed internet access to many businesses and residents that would not have otherwise been able to obtain the enhancement in productivity and enjoyment the internet provides. Although it is true that the cable companies are also major providers in the high speed internet access area, even that was not a pursued technology until DSL became a viable alternative. And the ILECs entry into DSL was not until after the CLECs had begun to deploy the service as a competitive product to the high price of T1's and inefficiencies of ISDN.

Further, it is the CLEC's who have begun providing DSL service to the non-metropolitan areas. As an example, JAS Networks, Inc. provides DSL service to the businesses and residents of Richland, Michigan. This community of approximately 7000 residents has no other alternatives to high speed internet access, including the ILECs. The ability to connect to the high capacity lines of the ILEC is necessary in order for JAS Networks, Inc. to provide service to these persons. There are no other alternatives. However, as a small competitor, JAS would not be able to afford to build out the infrastructure to provide them with service. These customers would have to stay connected to what the internet offers at speeds generated by a 56k dial up modem.

Competition is at hand however it still has a ways to go before it will be a practical reality. To destabilize the competitive environment now would preclude persons outside of the major metropolitan areas from benefiting from high speed internet access for the immediate future. As with the need for connection to the customer premises, high



capacity lines are necessary to the ability of CLECs to provide service to customers who are not otherwise able to receive affordable and effective internet access. Without the ability to transport the broadband that customers seek to send, at reasonable rates and in a quality manner, it makes no difference if the CLECs are able to serve the end user, as the end users traffic will not be able to traverse the internet. This Commission needs to continue to support the deployment of broadband by making accessible the infrastructure that the ILECs control, and which has been built by government sponsored and approved monopolistic ownership over decades and which cannot be expected to be equalized in a manner of just a few years.

The ILECs have raised the issue of whether the imposition of unbundling requirements on them may deter their investment in new facilities. Although the ILECs have already raised the issue to a point of extortion of this Commission, by SBC/Ameritech's action of pulling back on the Project Pronto as a threat to obtain their desired relief from the FCC, their argument is without merit. There are two primary reasons behind this lack of merit in the argument. One is that as evidenced by deployment of the numerous CLECs entering the local market, as competition develops and a market evolves for technology, it will be deployed if it is possible and a business plan can be developed. Two is that broadband deployment can generate a profit. (Recent SBC announcement of profitability of DSL, DSL Prime, 4-5-2002 [www.dslprime.com/News\\_Articles/news\\_articles.htm](http://www.dslprime.com/News_Articles/news_articles.htm)) So long as there is a profit to be obtained, the ILECs will come. Especially when the ILECs are looking at a 40% EBIDTA margin, with a continuing reduction in costs. However, even with these extraordinary margins, SBC nor other ILEC's have passed on the savings to the consumers. Why????? As a monopoly, they do not have to. And as the only DSL

provider in a majority of markets, the Monopoly Provider, they can dictate what the rate will be.

Consumers know of the benefit of DSL deployment, as do the Federal and State Legislators. The ILECs know that they cannot sit back and continue to deprive patrons of the benefit of DSL without there being far reaching repercussions, including loss of revenue. As the Commission has acknowledged in the NPRM, there are competitive technologies making end roads into the broadband market: cable, wireless and satellite. However, the expense, lack of reliability and lack of ubiquitous coverage still hamper each of the alternative technologies. Yet, when the only alternative that a business owner in a non-metropolitan area has is a T1 at approximately \$1,000.00 per month, some of the other alternatives are not so distant of a possibility. Would the business owner prefer to pay \$300.00 per month for a wireless connection, even if not totally reliable, then to pay \$1000.00 per month for a service that bloats his budget and requires him to increase the price for his wares? Further, if the ILECs are allowed to maintain a monopoly over the last mile, and high capacity transport, that connects every home and business in the world, and therefore insure to themselves a captive market, they will begin to deploy alternative technologies, beginning with DSL, rather than see the consumers go to their competitors. If there is any doubt, compare the ILECs deployment of advanced services to the same markets where CLECs have become a force in that market. However, where there is none, or has not been competition, the ILECs have maintained a hands off approach. Competition has been the catalyst to the deployment and growth of the internet in the world, and has allowed the business owner in an otherwise un-served area to compete with other businesses in the world.

Are residential customers also going to benefit from the deployment of technology by the ILECs? Without competition there is no incentive for the ILEC to take any action to increase the capacity of the infrastructure and thus provide service to the residential market. After all, the alternative of the high price and slower ISDN line is still available. Residential customers will not accept the high price of ISDN nor wireless, or satellite. And the current charges for cable and DSL will not be acceptable if the intent is to obtain greater access to the residential customer. Competition, which necessarily requires adequate access to the infrastructure, provides the means by which broadband can be effectively provided to the masses.

The NPRM seems to weigh its decision in this matter upon the definition of “telecommunication services” and “Information Services”, and the application under section 251 of the Federal Telecommunications Act.

Telecommunications services is defined in the NPRM, citing from the Federal Telecommunications Act, as:

“the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available to the public, regardless of facilities used.”

Telecommunications is defined as:

“the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received. Under this definition, an entity provides telecommunications only when it both provides a transparent transmission path and it does not change the form or content of the information. If this offering is made directly to the public for a fee, it is deemed a ‘telecommunications service’.”

Information Services is defined as:

“the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, or making available information via telecommunications.

On page 11 of the NPRM, the Commission tentatively concluded that,

“as a matter of statutory interpretation, the provision of wireline broadband Internet access is an information service. Specifically, we tentatively conclude that when an entity provides wireline broadband Internet access service over its own transmission facilities, this service, too, is an information service under the Act. In addition, we tentatively conclude that the transmission component of retail wireline broadband Internet access service provided over an entity’s own facilities is ‘telecommunications’ and not a ‘telecommunications services’.”.

It appears that the Commission is turning upon the digital aspect of the internet, and the manner in which the traffic over the internet is subject to data packet transport, encoding, aggregating of traffic, etc. However, if the Commission determines that DSL traffic utilizing the local loop is not telecommunications service, would a facsimile (fax) transmission provided over a standard voice service offering (which is within the definition of “telecommunication service”), since it changes the form or content of the information transmitted, be an information service? Yet, since the ability to transmit a fax is offered to the public for a fee, as part of standard business or residential voice service, it seems to fit within the definition of a telecommunications service.

Thus, what is a telecommunications service, may depend not only on what is the “product or service” being offered, but also one what just so happens to be the equipment that the “product or service” is transmitted over on that occasion. In some scenarios, a transmission where a customer “pings” a distant location for purposes of determining speed of connectivity would be classified as a telecommunication service since it does not change in form or content and is charged to the public for a fee. Yet, a person making a telephone call to his next door neighbor may not be a telecommunication service because the form of the transmission will change if his voice service is provided

via a DLC system, wherein the analog signals carrying the voice traffic are converted into digital signals.

Further, how would the Commission's tentative conclusions be impacted when dial up internet access is taken into consideration? Since a dial up internet connection is over a voice connection, via an analog line, and a standard voice connection is within the definition of telecommunication services, would not dial up internet connection also be a telecommunication service? However, there is no doubt that a dial up internet connection would also fit within the definition of "information service", as would fax transmissions. Is the Commission's tentative conclusions calling into question the individual end users use of the line in the determination of whether there is a telecommunication service? Will CLEC's therefore have to fill out an application to the ILEC detailing what the customer is to use the service for, before the ILEC will be obligated to provide the Unbundled Network Element? Will an end user of a CLEC only be able to use the service provided by the CLEC for very specific uses, and if uses it for any other purpose, the ILEC will be able to automatically terminate the connection? And is the end result of the Commission's tentative conclusions such that end user customers will not be interested in acquiring the CLEC services since their use will be so limited, and face the risk of being disconnected at a moments notice? Does this not go against the intent and purpose of the Federal Telecommunications Act of 1996, and the profession of the Commission to enhance and support competition?

In paragraph 21, page 13 of the NPRM, the Commission states:

"For example, in the case where a wireline broadband Internet access service allows end users to retrieve files from the World Wide Web, an end-user must

have the capability to interact with information stored on the facilities of the provider of the wireline broadband Internet access service. Furthermore, to the extent to which a provider offers end-users the capability to store files on service provider computers to establish 'home pages' on the World Wide Web, the consumer is utilizing a 'capability for ... storing ... or making available information' to others. It seems, from these factual situations, and others, that providers of wireline broadband internet access services provide end-users with more than pure transmission, 'between or among points selected by the user, of information of the user's choosing, without change in the form or content of the information service.' Therefore, we tentatively conclude that Congress intended the definition of information service to include the capabilities provided by wireline broadband Internet access services. As mentioned above, we have interpreted the categories of information service and telecommunications service to be mutually exclusive."

Thus, using the above as a baseline, any internet connection whether from a DSL line or as a result of a dial up connection over any type of modem using a standard telephone line, amounts to information service. With the Commission's tentative conclusion, the use of that loop to provide telephone service to a customer who might just connect to the internet to "retrieve files from the World Wide Web", or who as a result of the service offering for the internet connection obtains 10 or 15 meg of webspace on which they have pictures of grandchildren or the new home or whatever use they may put it to, has now taken the loop from a telecommunication service to an information service.

Wireline broadband Internet access services will not change this impact of the connection to the World Wide Web.

The Commission asks for enlightenment on the biggest fallacy that the ILECs have been able to pull over on the Commission, to wit: the separate entity for provisioning of the ILECs broadband offering. This fictitious “separation of the ILEC” has many illogical aspects to it, the biggest of which include that the ILEC broadband provider is a separate entity from the ILEC which “buys” its services from the ILEC in a competitive manner, and that the separate ILEC broadband provider is indeed a separate entity. As an example, under the SBC Ameritech merger agreement, SBC and the separate SBC broadband provider may co-market the broadband services, however it is advertised as solely an SBC/Ameritech offering. The only co-marketing is a very small print notation mingled in amongst all the other disclaimers that the “information service is provided by SBC Internet Services, Inc. and combines DSL transport with internet access.” (see the Bernie advertisement on the SBC site (note not the SBC Internet Services, Inc. site) [www.sbc-dsl4bernie.com/ameritech](http://www.sbc-dsl4bernie.com/ameritech)) Under no stretch of the imagination can this type of advertising be considered as co-marketing. It is purely advertising by SBC/Ameritech, with the above small print notation as an attempt to “cover” themselves on the co-marketing obligation that they agreed to as part of the approval process to obtain authorization for the merger, yet so blatantly disregard. The other, even more flagrant fallacy of the separate entity for provisioning of advanced services, is the aspect that the “separate entity” (which we see by the advertisement referred to above as an example is still “SBC”) has to buy its access in a competitive manner from the ILEC. This whole idea is totally preposterous, and if the Commission truly sought to have a competitive

atmosphere in this environment, the ILEC would be separated into wholesale and retail divisions, that are totally separate corporations, with separate Board of Directors and Shareholders. Currently the fictitious "separate entity" is merely an "Enron type of shifting dollars from one partnership to another, in an elaborate accounting ploy. As far as the parent company SBC is concerned, does it make any difference to it if, as an example, it makes \$100 from the "separate affiliate" and \$100 from true competitors because it can argue that this is the correct price since its "separate affiliate" is paying that amount, even considering that the "separate affiliate" is paying \$75.00 more than the charge truly should be. The reality is that as far as SBC is concerned, if the "separate affiliate" goes bankrupt because of the high exorbitant prices that it is charged for access to transport functions and loops, so long as those high exorbitant prices also are able to undermine the true competitors in the field, and thus drive them into bankruptcy or at least a disadvantaged position, SBC is happy.

The Commission cannot place reliance on tariffs to provide equitable and fair offering of access to Unbundled Network Elements. The ILECs will impose stagnating terms and conditions of service that will undermine the competitive market and opening of advanced services to the public. As an example, is the terms of offering for DSL capable loops by SBC/Ameritech in Michigan, where a CLEC is currently charged \$421.33 for installation of the same loop that if ordered and provided as an analog loop would cost \$20.98 for installation. SBC/Ameritech charges the same price for installation of a DSL loop as for an analog loop in each of the other Ameritech states, to wit: Indiana, Illinois, Wisconsin, and Ohio. And the timing of these prices are both before and after the pricing that SBC/Ameritech filed in Michigan. Since every order placed by CLECs in all five



states served by Ameritech for an analog loop and an DSL loop are processed through the same Local Service Center, thus utilizing same systems to order and process the loop order, whether analog or DSL, obviously SBC/Ameritech is trying to undermine the competitive market for DSL in Michigan. Further, since DSL service is provided by SBC via an analog loop, it once again raises the competitive question, when SBC questions the ability of a CLEC to provide DSL service only via an analog loop. DSL service works over a loop classified as an analog loop or one classified as DSL capable. It is just that a CLEC is charged \$421.33 more in Michigan because of the name of the loop being "DSL capable".

Although it is true that CLECs have the ability to pursue litigation to try to right the wrong that the ILECs impose, it takes time, money and personnel efforts to fight these improper actions. Valuable time, money and efforts that could be better served in trying to build up a business that can provide the high speed internet access that consumers demand and deserve. Further, the waste of time, money and effort needed to pursue equitable rates and terms of service from the ILEC, ends up costing consumers more. The CLECs cost of all of this has to be passed on to the consumer. The ILECs on the other hand, not only pass the cost of their efforts on to the consumers, but also all of their costs incurred in putting up the roadblocks to competition are aggregated into the TSLRIC costs, so the CLECs end up having to pay twice. Yet SBC/Ameritech is able to enjoy 40% EBIDTA earnings at the expense of CLECs and consumers.

Contractual negotiations are also a fictitious stonewall thrown up by the ILECs. For there to be "negotiations" both parties have to be able to come in on equal terms, and for the CLECs there have to be reasonable alternatives. However, the ILECs have the only

means of connection to the end user for provisioning of DSL service, the last mile. There are no other reasonable alternatives. If the CLEC wants to provide DSL service to the end user the CLEC has to have that last mile connection. The last mile connection that is 100% controlled by the ILECs and which was gained by having a government sponsored 100% monopoly in the build out and provisioning of service. A last mile connection that was built by a revenue guaranteed process that made it so the ILEC could not lose money as they built out their system. As well as a revenue guaranteed system that did not care about the excessive spending or abusive spending by the ILEC. The ILEC has been able to just put all costs together, whether reasonable or not, and they were approved as a cost of providing service, and thus passed on to the end user.

CLECs have no negotiation power. They are stuck in a "take it or leave it" situation. The ILECs can and do say that this is what you can have and this is the price for it.

"What else can you do? Nobody else is able to provide you with that connection to the customer premises. And we want to drive you out of business so that we can maintain our monopoly and total control over what services the end user is able to obtain, including the price they will pay."

That is why no ILEC has ventured into the "protected" territory of the other ILECs. At the astronomical prices and inequitable terms and conditions imposed by the protected ILEC on any prospective competitor to be able to enter into a market to provide service, even the other ILECs know it is a no-win situation. They know they cannot make a reasonable profit, nor provide quality service, under the imposing terms and conditions that they would be forced to deal with by the protected ILEC. Further, they each currently have a cash cow in their own territory, where they impose unbearable

conditions upon any prospective competitor, including any other ILEC who would dare to consider expanding into the protected ILECs territory. And this is the attitude from a prospective competitor who has the resources, equipment, knowledge and ability to be able to provide the last mile connection to an end user to provide the service. Even with all of the money they have, the equipment, and purchasing power that they possess, they are not able to negotiate an agreement with the protected ILEC to be able to offer a quality product at a price that is competitive and can return a reasonable profit (which does not have to rise to the point of 40% EBIDTA). Instead, the ILECs have taken the approach of merger and acquisition. Join forces with the competitor to gain a stronger foothold, and maintain the monopoly that they have found to be so fruitful and profitable. This Commission cannot be fooled by the false promises and fraudulent statements made by the ILECs to coerce this Commission into giving them what they want. They have made promises and more promises, yet have failed to follow up and abide by the promises they have made. SBC/Ameritech announced Project Pronto as the means to provide service to the residential customers. They made the promises of provisioning this service in order to gain approval for the SBC Ameritech merger. Yet as soon as this Commission and the states did not give SBC/Ameritech everything they wanted, they immediately pulled back the offer saying that they cannot justify doing as it is not profitable enough to incur the expenses. 40% EBIDTA is not enough? Obviously it is. However, the Commission and states did not do exactly what the ILECs wanted, and therefore the ILECs will hold the consumers hostage to get what the ILEC wants, and force the Commission and states to take action that satisfies the ILEC. Unfortunately the tentative conclusions made by the Commission in this NPRM have succumbed to the

demands and actions of the ILECs, and unless altered to provide a competitive environment, will once again prove to the ILECs that the ILECs totally control the telecommunication market in America. And there is nothing anybody can do to stop it.

The Commission asks in paragraph 50

“...whether, under a new regulatory approach, self-provisioning wireline broadband providers should be required to do no more than make transmission available to competitors at market-based prices, or whether they should be required to make transmissions available to competitors at commercially reasonable rates. Or, is some alternative set of pricing regulations preferable.”

For the reasons set forth above, there is no “market based pricing”. A monopoly does not establish “market based pricing”. For competitors, they establish a “run them out of business price”. And for end users, they establish a “take it or leave it price”.

Consumers, business and residential, have a need for high speed internet access. Since they need the product they will pay what they can afford to pay. They may not get the product they want, as they may not be able to afford high speed internet access, but perhaps they can afford a much slower service that will allow them to at least have access to the internet. Much like business and residents do now, to wit: dial up access. And for the few affluent few who can afford the extremely high price that the ILECs do and will demand, they can purchase the high priced high speed connection. This will allow the affluent to grow more affluent, and keep the less with less. Although this does seem to be against the intent of Congress in enacting the Federal Telecommunications Act of 1996.

A regulatory framework that will promote competition is necessary to insure that every person and business is able to obtain sufficient broadband access to provide the benefits the internet can provide. Whether an engineering company transferring documents from office to client, a college student doing research for a term paper, a young child surfing the net to pull up information about her dog or cat, or a competitive local exchange provider filing comments with the Federal Communications Commission, everybody deserves reasonable access to the internet for a competitive price. The current regulatory framework, although by no means perfect, at least provides a modicum of competitive atmosphere. Every step along the way from licensing, to state commission review or arbitration, to litigation as necessary, takes time, valuable time, and money to pursue. However, at least it affords a competitor with some assurance that they do not have to “accept” whatever the monopolistic ILEC demands. However, if the regulatory requirements currently in place are further eroded ILECs will continue to be the monopolistic power dictating price, service, and technology advancement. Technology will no longer continue to advance as it has over the last 7 to 8 years if the ILECs have no competition, as there will not be the incentive for them to do so. Why change what works and makes money? Why invest in infrastructure improvements if the current infrastructure will continue to support the services to be offered?

Provided the ILECs are required to allow access on reasonable terms and on reasonable rates to the Unbundled Network Elements required to provide broadband, competition will continue to grow. And as competition grows, further technological advancement will continue, thus benefiting consumers more and more. Over a reasonable period of time, competition will grow to a point where the deployment of broadband is not so

dependent upon the ILEC infrastructure. This will not take in excess of 100 years, the time frame that the ILECs have had to build out their monopoly. Look at the tremendous improvement in deployment that has occurred over the last 6 years since the FTA became a reality. At least now, DSL is not a hidden technology, capable of providing fast data transfer that the ILECs try to keep under wraps so as to not deprive them of the significant revenue generated by T1's and ISDN.

### **CONCLUSION**

As a small Competitive Local Exchange Carrier who entered into the market of providing telecommunication services to business and residential customers based upon the promise the Telecommunications Act of 1996 held forth, JAS Networks, Inc. is becoming increasingly disheartened by the recent recessionary efforts recently taken by the Commission to thwart the competitive atmosphere that has taken place in the United States. The "tentative conclusions" made by the Commission in this NPRM do not further the competition that has so often been highlighted as the intent of the Telecommunications Act of 1996.

The Commission must continue the competitive impetus that was undertaken by the previous administration. The ILECs cannot continue to guide the direction of this Commission. CLECs need to have access at competitive pricing to the necessary Unbundled Network Elements in order to provision broadband services to business and residential customers. This need does and will continue for the immediate future until such time as CLECs are allowed to have non-discriminatory access, provisioned in a quality manner, with no intentional interference by the ILECs, and on terms and rates that

will continue to foster the growth of technology for the business and residential users. America is far behind in the deployment of high speed internet access as compared to many of the so called "underdeveloped nations". If the Commission and Congress continue to favor the ILECs by enhancing their monopoly at every turn, it will soon be the United States which qualifies as the underdeveloped nation.

The ILECs have every advantage as it comes to the ability of providing service to the customers who utilize broadband service. With the "tentative conclusions" made by the Commission in this NPRM, the ILECs advantage has been multiplied many times over. And we are not talking just about the advantage the ILECs have over the CLECs. We are also talking about the advantage the ILECs have over the consumer. The recent technological advancements that have come about as a result of the efforts of CLECs, and not the ILECs, has proven that the competitive atmosphere is best for America. The subject of this NPRM is proof of that. Broadband access, whether DSL or otherwise, has been a viable service for a number of years. Yet, until the CLECs became involved and began offering DSL service at a rate that actually made sense for end users, the ILECs did not offer it. Why? Because it would deplete the demand for the real money makers for the ILECs, to wit: T1's and ISDN. It did not matter what the end user wanted, or what was best for the end users. It mattered what made the most money for the ILECs. Period. And this ILEC philosophy will continue if this Commission allows them to be victorious in this, and the other related NPRM's before this Commission.

For all the reasons that have been stated above, and for enforcement of the competitive spirit that was the subject and intent of the Telecommunications Act of 1996, and which is the basis for the entire American structure, this Commission must make the ILECs

provision all Unbundled Network Elements necessary to allow CLECs to be able to provision DSL service, or whatever type of technological advancements as will come down in the future which further enhance broadband service to consumers. Further, these Unbundled Network Elements must be provided in a quality manner, and on reasonable rates and terms which will allow the CLECs to compete with the ILECs. This is the only way that end users, whether business or residential, will ever obtain the true benefits of what high speed internet access is able to provide.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Richard C. Gould".

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